THE EFFECT OF THE FEDERAL BANKRUPT ACT UPON STATE INSOLVENCY LAWS.

The dual nature of our government has given rise to many interesting questions as to supposed and real conflicts between State and National legislation. Many of these have long since been settled by decisions of the Supreme Court of the United States. One of the most perplexing, which still remains open, is that of the effect to be given to legislation by Congress by virtue of Section 1 of Article viii of the Constitution of the United States.

While it is settled that so far as any state legislation infringes upon federal statutes providing for a uniform system of bankruptcy throughout the United States, the state authority must, of course, give way to the national, no definite decision of the court of last resort has answered the question as to whether a state insolvency act is entirely suspended in all its provisions because of national bankruptcy legislation, or whether it is suspended only in so far as it applies or is applied.

Possibly the first case in which the question was mooted was *Sturges* v. *Crowinshield,*[1] which decided that since the adoption of the Constitution of the United States, a state has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts, and "provided further that there be no act of Congress in force to establish a uniform system of bankruptcy *conflicting with such law.*"

Ogden v. *Saunders,*[2] was argued in 1827 by Mr. Webster for the defendant in error and resulted in an affirmance of the judgment of the District Court of Louisiana, by a divided court. It also established the principle, as stated by Mr. Justice Johnson, "that the power given to the United States to pass bankrupt laws is not exclusive." The first syllabus reads:

[1] 4 Wheat. 122 (1819).
[2] 12 Wheat. 213 (1827).

> "The power of Congress 'to establish uniform laws on the subject of bankruptcies throughout the United States,' does not exclude the right of the states to legislate on the same subject, except when the power is actually exercised by Congress *and the state laws conflict with those of Congress.*"

In *Mayer* v. *Hellman*,[3] an action was brought by an assignee in bankruptcy against the assignee under the assignment laws of Ohio, of the same assignors, more than six months after the execution of the assignment under the state laws. The Supreme Court of the United States held that the action could not be maintained, remarking that an assignment for the benefit of creditors "is not absolutely void, and, if voidable, it must be because it may be deemed, perhaps, necessary for the efficiency of the Bankrupt Act that the administration of an insolvent's estate shall be intrusted to the direction of the district court, and not left under the control of the appointee of the insolvent." Mr. Justice Field delivered the opinion of the court and said:

> "The great object of the Bankrupt Act, so far as creditors are concerned, is to secure equality of distribution among them of the property of the bankrupt. For that purpose, it sets aside all transactions had within a prescribed period previous to the petition in bankruptcy, defeating or tending to defeat such distribution. It reaches to proceedings of every form and kind undertaken or executed within that period by which a preference can be secured to one creditor over another, or the purposes of the Act evaded. The period is four months for some transactions, and six months for others. Those periods constitute the limit within which the transactions will be examined and annulled, if conflicting with the provisions of the Bankrupt Act.
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> "Transactions anterior to these periods are presumed to have been acquiesced in by the creditors. There is sound policy in prescribing a limitation of this kind. It would be in the highest degree injurious

[3] 91 U. S. 496 (1876).

to the community to have the validity of business transactions with debtors, in which it is interested, subject to the contingency of being assailed by subsequent proceedings in bankruptcy. Unless, therefore, a transaction is void against creditors independent of the provisions of the Bankrupt Act, its validity is not open to contestation by the assignee, where it took place at the period prescribed by the statute anterior to the proceedings in bankruptcy. The assignment in this case was not a proceeding, as already said, in hostility to the creditors, but for their benefit. It was not, therefore, void as against them, or even voidable. Executed six months before the petition in bankruptcy was filed, it is, to the assignee in bankruptcy, a closed proceeding."

In *Reed* v. *McIntyre*,[4] the debtor made an assignment for the benefit of creditors, which was set aside in favor of his subsequent assignee in bankruptcy. The creditor who levied upon the assigned property, after the execution of the assignment and before the proceeding in bankruptcy, was held to secure thereby no priority over the other creditors of the bankrupt. Mr. Justice Harlan said:

> "Even if it were conceded that the assignment to Combs was an act of bankruptcy upon the ground that it was made with the intent to prevent the property from coming to the assignee in bankruptcy, and from being distributed under the Bankrupt Act, it was not invalid, *except with reference to proceedings under the Bankrupt Statute, to be instituted by the bankrupt, or by some creditor, for the purpose of bringing the bankrupt's effects into the Bankruptcy Court.*"

Boese v. *King*,[5] was decided by a divided court. The plaintiff contended that the statute of New Jersey with reference to an act by which an assignment was made was by force of the Bankrupt Act of 1867, suspended and of no

[4] 98 U. S. 507 (1878).
[5] 108 U. S. 379 (1883).

effect. Mr. Justice Harlan, who delivered the opinion of the court, said:

> "Especially it is not necessary to determine whether the Bankrupt Act of 1867 suspended or superseded all of the provisions of the New Jersey Statute. Undoubtedly the local statute was from the date of the passage of the Bankrupt Act, inoperative in so far as it provided for the discharge of the debtor from future liability to creditors who came in under the assignment and participated in the distribution of the proceeds of the assigned property."

In that case no bankruptcy proceedings were ever commenced, and the court, referring to the creditors, said:

> "But they elected to lie by until after the expiration of the time within which the assignment could be attacked under the provisions of the Bankrupt Act."

Mr. Justice Matthews delivered a short dissenting opinion, in which concurred Mr. Justice Gray and two other justices. He contended that the New Jersey Statute was in effect an insolvent or bankrupt law and "was accordingly in conflict with the National Bankrupt Act of 1867, when the latter took effect,and from that time became suspended and without force until the repeal of the Act of Congress. It is conceded that the 14th section, which provided for the discharge of the debtor, is void by reason of this conflict, and, in our opinion, this carries with it the entire statute. For the statute is an entirety, and to take away the distinctive feature contained in the 14th section destroys the system. It is not an independent provision, but an inseparable part of the scheme contained in the law."

Tua v. *Carriere*,[6] involved the validity of the insolvent Law of Louisiana, which was enacted while the Bankrupt Act of 1867 was in force. The decision was that:

> "A state insolvent law is valid though enacted while a national bankruptcy act is in force, and on repeal of the latter it becomes operative."

[6] 117 U. S. 201 (1886).

Mr. Justice Woods said:

> "If those [insolvency] laws had been enacted for the first time, they would, *so far as inconsistent with the Bankrupt Act,* have been inoperative while that Act remained in force, but upon its repeal would have come into operation. The enactment of the insolvent law during the life of the Bankrupt Act would have been merely tantamount to a provision that the former should take effect on the repeal of the latter. It follows that since the repeal of the Bankrupt Act, all the provisions of the Insolvent Law of Louisiana have been valid and operative."

It will thus be seen that the question is still, so far as the Supreme Federal tribunal is concerned, an open one. The matter becomes of great importance to the Pennsylvania practitioner in view of the passage by the Legislature of the Act of June 4, 1901.[7] By that Act all existing laws on the subject of insolvency are repealed and an elaborate system is created, providing that preferential assignments shall inure to the benefit of all the creditors; that assignments may be made, but that preferences therein shall be void; that persons arrested on civil process can make assignments; that involuntary insolvency proceedings may be commenced against an insolvent, who has not made an assignment for the benefit of creditors, and who has committed any one of eight acts of insolvency; and further providing, among other things, that those participating in the funds of the estate shall sign full releases to the assignor, discharging him from all liability, except under eleven different sets of circumstances, such as where the action is founded on actual fraud, embezzlement, etc. This statute having been passed while the National Bankrupt Act of July 1, 1898, was still in force, what effect is to be given to the state Act? The Pennsylvania cases on the point may be briefly reviewed.

In *Commonwealth* v. *O'Hara,*[8] Mr. Justice Williams, then specially sitting as Associate Judge in the District Court of Allegheny, held that:

[7] P. L. 404.

[8] 6 Philadelphia, 402 (1867).

> "The bankrupt law *ipso facto* supersedes all proceedings under the insolvent laws of the state, in all cases where the subject matter and the persons are the same."

The question there arose under the Warrant of Arrest Act of 1842, and Judge Williams availed himself "of the learning and judgment of my brethren, the President Judge of this court, and the President and Associate Judges of the Court of Common Pleas." He noted that it had been ruled:

> "in Zeigenfuss' Case,[9] that a state insolvent law may exist and operate with full vigor, until the Bankrupt Law attaches itself upon the person or property of the debtor, by proceedings instituted in bankruptcy; and that no case of conflict can arise until after the proceedings in bankruptcy have reached that state in which the debtor has been judicially declared a bankrupt,"

but argued that

> "sound principle would require that in all cases where proceedings could be legally instituted, they should have the legal capability of being perfected and closed under the state law."

Commonwealth v. *O'Hara* was not followed, however, when the same question came before the Supreme Court in *Scully* v. *Kirkpatrick*.[10] Mr. Justice Sharswood said that

> "the state remedies against fraudulent debtors are not suspended by the operation of the Bankrupt Act of Congress, inasmuch as it is expressly declared in that Act, that 'no debt created by the fraud or embezzlement of the bankrupt or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged by proceedings in bankruptcy.' "

In *Tobin* v. *Trump*,[11] Judge Thayer held that the Domestic Attachment Law of Pennsylvania, of June 13, 1836, is inoperative and void as to all cases which are within the

[9] 2 Iredell, 463.
[10] 79 Pa. 324 (1875).
[11] 7 Philadelphia, 123 (1869).

provisions of the twenty-ninth section of the Bankrupt Law, the jurisdiction of the Courts of Bankruptcy as to such cases being exclusive. Judge Thayer, however expressed no opinion as to the effect of the Bankrupt Law, where the total indebtedness did not amount to the sum of $250, which, by the twenty-ninth section of the Bankrupt Law, was necessary to give the creditors a standing in a Court of Bankruptcy.

In *Shryock* v. *Basehore,*[12] President Judge Rowe, of Franklin County, in a long and careful opinion, decided that the Act of Legislature of 1850, in reference to proceedings in cases of insolvency of state banks is superseded by the National Bankrupt Act, and a deed of assignment made in pursuance of such proceedings is void, because it is only part of the appliances of a law which was suspended. This case reached the Supreme Court and was reversed: *Shyrock* v. *Basehore,*[13] Mr. Justice Paxson said:

> "A vast amount of learning has been wasted in this case. If the questions which were so elaborately argued here and in the court below were legitimately before us, we would certainly feel that the case was not free from difficulty. But Basehore, the defendant, has no standing which entitles him to raise them. He is the debtor of the bank, and this suit was brought against him to recover the amount of such indebtedness. He defends upon the ground that the assignment by the bank was in contravention of the Bankrupt Law. What is that to him? What has he to do with the distribution of the fund? That question concerns only the creditors of the bank, and can only be raised by them."

And again:

> "Whether the fund shall be distributed according to the terms of the Bankrupt Law, or in accordance with our Act of 1850, under which the assignment was made, are questions which do not concern this defendant.
>
> "Any other conclusion would lead to difficulty. The time has gone by for proceedings in bankruptcy.

[12] 11 Philadelphia, 565 (1875).
[13] 82 Pa. 159 (1876).

> There is no assignee in bankruptcy, nor can there be under the admitted facts in the case. If the bank, through its assignees, cannot sue for this debt, it cannot be recovered at all."

Of course, where an adjudication in bankruptcy has taken place, there is no question that the Federal Law, and it alone, applies.

Thus in *Barber* v. *Rogers*,[14] B., arrested under Act of July 14, 1842, gave bond to apply to be discharged as an insolvent; he appeared and the hearing was continued from time to time, and whilst pending he was adjudged a bankrupt in United States Court. Held, that the condition of his bond was discharged, and the sureties released. "The laws of the United States being paramount in authority, of course, superseded those of the state."

Two or three cases which have arisen under the Pennsylvania Act of 1901, deserve notice.

In a recent case[15] Judge Landis held that the Act does not apply to judgments entered before its passage.

In *Estate of T. J. Dolhenty*,[16] Judge Weand held in a brief opinion that the Act was entirely inoperative by reason of the National Bankruptcy Act.

In *Hull's Estate*,[17] the opposite conclusion was reached by Judge Stewart, of Franklin County. He said:

> "Until, however, the paramount jurisdiction is actually called into operation upon the particular subject matter, the state law operates."

And again:[18]

> "Where supremacy is yielded to the Federal Law when it is sought to be applied there can be no conflict. If in Pennsylvania we choose to administer insolvent estates in our own way and in our own courts, when Federal authority has not actually attached the person

[14] 71 Pa. 362 (1872).
[15] 19 Lancaster Law Review, 14 (1901).
[16] 18 Montgomery County Rep. 21 (1901).
[17] 25 C. C. Rep. 353.
[18] P. 356.

or property of the bankrupt, we are strictly within our rights; and within these limits our state laws may operate without infringing in the slightest degree upon Federal supremacy. Allowing the Act of June 4, 1901, to be constitutional, there are cogent reasons, aside from the pure logic of the case, why it should be regarded as operative. We do not say despite the logic of the case, but in support of the logic that would sustain the Act. If the Act be held to be suspended and inoperative, it is difficult to see how an assigned estate for the benefit of creditors can be safely and properly administered here. That such assignments are valid, independent of any statute, is beyond question. *If it be an assignment of one not a trader, it is not within the purview of the Federal Law;* if by a trader, and not assailed within four months next after its execution, it is exempt from an attack. How are such trusts as these to be administered if not under and according to the provisions of this Act of June 4, 1901? By the last section of the Act all prior legislation with respect to deeds of assignment and the administration of trusts thereby created is repealed. This would leave us without any established system or rules for the settlement of assigned estates. A whole system was thought necessary to secure a wise, honest and equal administration of such trusts; but by the repealing clause of this Act this has been swept out of existence, unless, indeed, by a stretch of judicial authority which would approach perilously close to the legislative function, the doctrine of suspension is to be here again applied, and we be required to hold that the repealing clause becomes operative only when the Federal Bankrupt Law ceases."

In *Bates* v. *Rowley*,[19] Judge Peirce said:

"In the recent case of *Scully* v. *Kirkpatrick*, the Supreme Court decided that the Act of July 12, 1842, to abolish imprisonment for debt, and to punish fraudulent debtors, was not superseded by the Bankrupt Act of Congress, in cases where by reason of fraud, embezzle-

[19] 33 Legal Intelligencer, 202 (1876).

ment, etc., the proceedings in bankruptcy would not discharge the debtor.

. . . . . .

"It is also said that the state insolvent laws are not entirely abrogated. They exist and operate with full vigor until the bankrupt law attaches upon the person and property of the debtor."[20]

In an anonymous Pennsylvania case decided in 1841,[21] an assignment was held to be not void, though made after the filing of a petition and before a decree in bankruptcy.

In *State ex rel.* v. *Superior Court,*[22] the Supreme Court of Washington granted a mandamus, compelling the Superior Court to take jurisdiction of an action for the appointment of a receiver for an insolvent corporation under state laws, when it had not been adjudicated a bankrupt under the law of Congress. The Court said:

"It would seem that a corporation created under the laws of this state would be subject to the chancery jurisdiction of the courts, and that creditors of such corporation should have their ordinary remedies under existing state laws, *until such corporation is adjudged a bankrupt under the law of Congress and by the proper tribunal.* Unquestionably upon such adjudication the power of the state court to further proceed ceases."

Appended to the report of this case is a very exhaustive note on the relation of the Bankrupt Law to assignments and insolvency proceedings under state laws.

In *Ketcham* v. *McNamara,*[23] the Supreme Court of Connecticut reached an exactly opposite conclusion upon the facts from that of the Supreme Court of Pennsylvania, in *Shryock* v. *Basehore,*[23a] and held that an action by a trustee in bankruptcy to set aside a fraudulent conveyance of goods by the insolvent, since the Federal Bankrupt Act of 1898

[20] Citing *In re* John Zeigenfuss, 2 Ired. 463; *Reed* v. *Taylor,* 4 B. R. 710; S. C. 32 Iowa, 209.

[21] 1 Clark (Pa.), 121.

[22] 45 L. R. A. 177 (1899).

[23] 50 L. R. A. 641 (1900).

[23a] 82 Pa. 159 (1876).

took effect, cannot be maintained, although the insolvent has not been declared a bankrupt, since the title of the trustee is not merely voidable by proceedings in bankruptcy, but is absolutely void. Judge Baldwin said:

> "Congress has seen fit to provide a different means of impeaching such transactions, and one that leads to different results, both as to the debtor and his creditor. That no resort to this means has ever been had is unimportant. It was after four months from the passage of the Act, at the latest, the only means that could be pursued to set aside fraudulent conveyances, which, like that in the case at bar, were thereafter executed. Any different construction of the Act of Congress would often lead to frittering away insolvent estates in legal expenses."

The conclusions reached by that court resulted in completely absolving the fraudulent transferee from liability to anyone.

The Pennsylvania Insolvency Act of June 4, 1901, gives jurisdiction in involuntary insolvency proceedings, whenever an insolvent has committed any one of eight acts of insolvency, not including an assignment for the benefit of creditors. The National Act of July 1, 1898, gives jurisdiction in bankruptcy in case of any one of five acts of bankruptcy, including assignment for the benefit of creditors. The Act of 1901 affords remedies, which are not given by the Bankrupt Act, as follows:

"1. Has called a meeting of his creditors for the purpose of compounding with them, or has exhibited a statement showing his inability to meet his liabilities, or has otherwise acknowledged his insolvency.

"2. Has absconded or is about to abscond, with intent to defraud any creditor, or to defeat or delay the remedy of any creditor, or to avoid being arrested or served with legal process, or conceals himself within or remains out of the commonwealth, with like intent."

"5 Has been actually imprisoned for more than thirty days, in a civil action, or, being arrested therefor, has escaped from custody.

"6. Has refused or neglected to comply with any order, judgment or decree for the payment of money, and an execution therefor has been returned unsatisfied.

"7. Has suffered or permitted any attachment or sequestration to remain against any of his property, without attempting to dissolve, by rule taken for that purpose, or upon entering security for a period of thirty days, or having taken a rule to dissolve which has been discharged by the court, has not entered security within twenty days thereafter."

Under these circumstances the grave question is presented, whether the public policy of a state, deliberately declared by its legislature, should be defeated and frustrated, merely because of the existence of Federal legislation, which, while upon the same general subject matter, does not in any way conflict with the remedies given by the State Act. In other words, should the State Act be regarded as suspended where the national act does not apply?

And the further query suggests itself with equal force, are all the state laws to be regarded as suspended and as of absolutely no vitality where the Bankrupt Act *is not applied?* For, unless proceedings in bankruptcy are commenced within four months of the act of bankruptcy, the Federal jurisdiction cannot be invoked. Must all the state laws be suspended in *toto,* in order that the Federal Act may be uniform? The alternative in case of the non-applicability or non-application of the Federal Act, is between no law on the one hand, and such state laws and remedies as the local authorities in their wisdom have seen fit to adopt on the other.

The National Bankrupt Act does not apply to a given case unless there has been an adjudication in bankruptcy. There can be no such adjudication unless an *act of bankruptcy has been committed.* The Statute carefully names five acts of bankruptcy. These alone are legal grounds for an adjudication. It had been held in this circuit (Judge Dallas dissenting) that the mere fact of an execution was not an act of bankruptcy: *Duncan* v. *Landis.*[24] The Supreme Court has since decided to the contrary: *Wilson* v. *Nelson,*[25]

[24] 106 Fed. 839 (1901).

[25] Advance Sheets, January 1, 1902.

Fuller, C. J. and Shiras, Brewer and Peckham, J. J. disenting. This, of course, enlarges the scope and applicability of the Act.

But there are still in Pennsylvania, for instance, many cases in which the Federal Act cannot apply at all, and in which the State Legislature, in declaring the public policy of the commonwealth, has deemed it wise to give remedies to creditors. This public policy in no way interferes or conflicts with the Federal law, because in none of these instances, could the bankruptcy jurisdiction by any possibility attach. There is a radical variance in subject matter. The two systems can work independently of each other without any clash or disturbance.

But is this the case as to the other four acts of bankruptcy, in respect of which the state has furnished a subordinately-concurrent or alternative remedy, for these four acts of bankruptcy (excluding assignments for the benefit of creditors) are also acts of insolvency, and may be made the basis of involuntary insolvency proceedings? We have here one of the curious evolutions of a sovereignty within a sovereignty, the former being a part of the latter. The state may enact valid insolvency laws, to which full force and effect will everywhere be given, so long as they do not impair the obligation of contracts. The power of the nation in this respect is not *exclusive.* Can it be said to be *concurrent?* Not in the same sense that Federal and State Courts have concurrent jurisdiction of certain actions between citizens of different states. For in the nature of the case either the jurisdiction of the District Court sitting in bankruptcy or the Common Pleas sitting in insolvency must be paramount. Of course where the jurisdiction of the Federal tribunal first attaches, and there is in fact an adjudication in bankruptcy, this is the determination of a status, a decree *in rem,* which binds the world, is necessarily supreme and precludes subsequent remedial action in a State Court. And the same is true, notwithstanding the jurisdiction of the State Court first attaches; a subsequent adjudication in bankruptcy will *ex propria vigore,* dissolve the proceedings in the state tribunal. Otherwise the bankruptcy law would not be "uniform throughout the United States." No difficulty here arises;

wherever there is a real conflict the state must yield to the Federal jurisdiction. There still remains, however, the large class of cases in which *the Federal jurisdiction is not invoked and by reason of the lapse of time cannot be.* Are the creditors to be deprived of all right of concerted action in such cases?

The machinery of the bankrupt court does not act *sua sponte;* it must be set in motion by the bankrupt or the creditors. There must be an act of bankruptcy, *e. g.,* an assignment for the benefit of creditors. The Federal jurisdiction *may* then be invoked. But there is no obligation upon the creditors to invoke it. In the majority of instances the only ground for desire to invoke the National Bankrupt Act is in order to avoid or set aside preferences. If there have been no preferences, and the assignee chosen or the receiver appointed, is satisfactory to the creditors, it may be that the creditors will prefer to have the estate administered under the state law and under the direction of the state courts. Congress has given to the creditors the right to choose their representative, but Congress has seen fit to set limits to the exercise of this right. Not only must there be an act of bankruptcy, but the petition must be filed within four months. If no petition in involuntary bankruptcy is filed within four months why should not the estate be administered by the assignee?

It is not, of course, attempted to deny the plenary power of Congress under the Constitution to enact a bankrupt law, which would at once suspend in whole the operation of all state insolvency acts. Congress is supreme in this field and its powers are unlimited. So far as the power is exercised the state bankrupt law would be *ipso facto* suspended. Congress has not seen fit to exercise its power to this extent. It has hedged about the right to invoke the jurisdiction of the bankrupt court by prescribing certain limitations, beyond which creditors cannot go. It has further, by necessary implication from the language of the Act, given to the creditors the election, during the period of four months, whether to apply the Bankrupt Act. If the creditors properly invoke the jurisdiction of the bankrupt court, it is, of course, exclusive in that particular case. But the creditors have this

right for four months, and no longer. During this period no one but the creditors can decide whether the Bankrupt Act shall be applied. After the four months have elapsed the Bankrupt Act cannot be made to apply, and no adjudication in bankruptcy can lawfully be made. Yet, if the insolvency Act is to be suspended in all its particulars, how shall the estate of the insolvent be administered?

We have, then, two classes of cases: (*a*) Those to which the Act of Congress does not apply, and (*b*) those to which it is not applied. In these cases there is no conflict between the state and Federal Law. Why must the state law be regarded as suspended, and anarchy and chaos be preferred to the public policy of the state?

"Expense" is one of the reasons given by the Connecticut Court. This has no application to either class (*a*) or class (*b*). It applies only where the Acts conflict. May it not be suggested that even an expensive remedy is better than none?

"Uniformity" is another objection. But is there any real lack of uniformity in merely allowing state laws to operate where the Federal Statute does not or cannot?

"All the provisions of the state laws must stand or fall together." But the contrary is now regarded as settled law, so far as constitutional questions are concerned. As part of a statute may be constitutional, and the remainder perfectly valid, why may not part of an Act be suspended and the balance remain in full force?

"Legal principles demand that proceedings once commenced may reach finality and fruition." This remark applies only where the state proceedings may be superseded by bankruptcy, and has no applicability to classes (*a*) and (*b*). Any state judgment against an insolvent may be foiled by bankruptcy. This is a necessary incident of our dual government and Federal supremacy.

Section 71[b] provides that "proceedings commenced under state insolvency laws before the passage of this Act shall not be affected by it," and impliedly prohibits subsequent insolvency proceedings. "The sole saving clause affecting jurisdiction of State Courts provides for cases commenced in those courts before the passage of the Act. The plain implication is that proceedings commenced in the state courts

after the passage of the Act are unauthorized:" *Parmenter Mfg. Co.* v. *Hamilton.*[26] The sweeping "implication" seems scarcely to be warranted. A simple affirmative as to existing proceedings does not necessarily prohibit all subsequent proceedings. The saving clause can be readily interpreted as having been intended to prevent interference with the existing status by legislation, which might be retroactively and harshly applied. Funds in the hands of duly constituted state insolvent authorities might be rudely wrested from them by virtue of subsequent Federal legislation almost amounting to an *ex post facto* law. No word is said as to subsequent proceedings under state insolvency laws. The effect of the passage of the Federal Act upon subsequent state insolvency proceedings must depend, not upon this saving clause of section 71, but upon the Act as a whole. Was it the intention of Congress to deprive the States of a multitude and variety of remedies not given by the Bankrupt Act? That Congress *could* have done so is freely admitted. That it would have been narrow statesmanship to improvidently strike down the public policy of states *where such policy in no way interfered with the Federal policy,* and where the enforcement of the local laws in no way conflicted with the National Act, must be conceded. That the Congress of 1898 so intended is denied.

Ira Jewell Williams.

February, 1902.

[26] 172 Mass. 178 (1898).